**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**
**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Appeal No.562 of 2007**

**Between:**

A. Raj Kumar

… Appellant

**And**

The Divisional Security Commissioner,
RPF, Hubli, Karnataka and others.

… Respondents

**:: J U D G M E N T ::**

Counsel for the appellant : Sri Nandigam Krishna Rao

**10th July, 2007**

**Per G.S. Singhvi, C.J.**

This is an appeal for setting aside order dated 21.2.2007 passed by the learned Single Judge in Writ Petition No.18940 of 2007 whereby he declined the appellant's prayer for nullifying his dismissal from service on the charge of unauthorised absence from duty.

The appellant joined service as Constable in the Railway Protection Force (RPF) in April 1983. In 1992, he was removed from

service on the charge of unauthorised absence from duty from 28.8.1991 to 11.6.1992. On appeal, the punishment of removal from service was substituted with that of reduction of his pay for a period of three years. In the first week of April, 1993, the appellant again proceeded on casual leave. He then sent applications dated 05.4.1993, 10.4.1993 and 12.4.1993 for extension of leave on the ground of illness of his wife. He also submitted medical certificates in support of his plea of the wife's illness, but his request was not accepted by the competent authority and vide letter dated 11.5.1993, he was advised to resume duty within three days. However, instead of joining duty, the appellant submitted another application dated 21.5.1993 for extension of leave. The competent authority again declined his request. After sometime, an enquiry was instituted against the appellant under Rule 153 of the Railway Protection Force Rules, 1987 on the charge of unauthorised absence from duty. A copy of charge sheet dated 20.9.1993 was sent to the appellant by post, but the same was returned with the remarks "addressee refused, hence returned." Shri H.N. Shotoli, who was appointed as enquiry officer, issued notice to the appellant to attend the enquiry, but he did not turn up. Therefore, after recording the statement of the departmental witness, namely, Shri L.N. Tahiliani, the enquiry officer submitted report dated 31.12.1993 with the finding that the charge of unauthorised absence from duty with effect from 08.4.1993 is proved against the delinquent. A copy of the enquiry report was sent to the appellant at his residential address, but the same was returned with the remarks "unclaimed/non-available." The disciplinary authority i.e. Divisional Security Commissioner, Railway Protection Force, Hubli (respondent No.1 herein), after considering the enquiry report, passed order dated 15.2.1994 whereby he removed the appellant from service.

Deputy Chief Security Commissioner, Railway Protection Force, Secunderabad (respondent No.2 herein), who considered the appeal preferred against the order of punishment, concurred with the

enquiring/disciplinary authority that the appellant is guilty of unauthorised absence from duty. Respondent No.2 also took note of the fact that in the past, a similar punishment was imposed on the appellant on the charge of unauthorised absence from duty and held that there is no ground to show any sympathy with him. The revision filed by the appellant was dismissed by Chief Security Commissioner, Railway Protection Force, Secunderabad (respondent No.3 herein), vide his order dated 08.2.1995.

Having failed to persuade the departmental authorities to show leniency, the appellant filed Writ Petition No.18940 of 1997. The learned Single Judge adverted to the merits of the finding recorded by the enquiry officer, as also the appellate order, and held that the punishment of removal from service imposed by the disciplinary authority does not call for interference by the Court.

Shri Nandigam Krishna Rao, learned counsel for the appellant fairly admitted that in the year 1992, penalty of removal from service had been imposed on the appellant and that the same was, later on, converted into reduction of pay for three years, but argued that this adverse factor could not have been taken into consideration for determining the gravity of the misconduct allegedly committed by him in 1993 because the charge framed by the disciplinary authority did not make a mention of his past adverse record. Learned counsel further argued that the penalty of removal from service should be treated as 'shockingly disproportionate' and quashed because the charge of absence from duty levelled against the appellant was very minor and, as a matter of fact, he was compelled to remain away from duty on account of the ailment of his wife. Sri Nandigam Krishna Rao emphasised that while imposing the extreme penalty of removal from service, the disciplinary authority altogether overlooked the factum of illness of the appellant's wife, which was duly supported by medical certificates and argued that this by itself should be treated sufficient for nullifying the order of punishment.

In our opinion, there is no merit in the arguments of the learned counsel. The parameters for exercise of the High Court's power to issue a writ of certiorari are well-defined. A writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of

forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

The High Court's power of judicial review of the disciplinary action against the delinquent employee is very limited. The High Court can interfere with the order of punishment if it is found to be vitiated due to violation of the statutory rules or regulations or the principles of natural justice and such violation is found to have prejudiced the cause of the delinquent. The High Court can also nullify the order of punishment if the finding of guilty recorded by the enquiring/ disciplinary authority is based on no evidence or is influenced by extraneous factors/considerations. The doctrine of proportionality and Wednesbury Rule can be invoked by the High Court if it is convinced that the punishment imposed by the employer is per se arbitrary/capricious or wholly disproportionate to the misconduct found proved. Of course, the last mentioned ground is not available in cases involving fraud, misrepresentation or misappropriation/embezzlement of public funds.

In **Ranjit Thakur v. Union of India**[1], the Supreme Court applied the 'doctrine of proportionality' and interfered with the discretion exercised by the employer to punish delinquent employee. Some of the observations made in that judgment are extracted below:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G. Ganayutham**[2], the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

> "(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.
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> (2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.
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> (3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.
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> (3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.
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> (4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.
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> (4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left

open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In **State Bank of India v. Samrendra Kishore Endow**[3], **State of Uttar Pradesh v. Ashok Kumar Singh**[4], **State of Uttar Pradesh v. Nandkishore Shukla**[5], **State of Punjab v. Baxi Singh**[6], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[7], **Union of India v. J.R. Gheman**[8], the Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

In **Om Kumar v. Union of India**[9], the Supreme Court considered the applicability of the doctrine of proportionality in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra), **B.C. Chaturvedi v. Union of India**[10] and held:

"1) In this context, we shall only refer to these cases. In **Ranjit Thakur v. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the

administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal**[11], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

> "The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional."
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> (underlining is ours)

In **Director General, RPF v. Ch. Sai Babu**[12], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the

department/establishment in which the delinquent person concerned works."

The views expressed in the above noted cases have been reiterated by the Supreme Court in its recent judgments – **Hombe Gowda Educational Trust v. State of Karnataka**[13], **Commissioner of Police v. Syed Hussain**[14], and **State of U.P. v. Sheo Shanker Lal Srivastava**[15].

We may also observe that while scrutinising challenge to the disciplinary action taken against the delinquent employee, the High Court cannot sit in appeal over the judgment of the departmental authorities and interfere with the finding reached by the enquiring/disciplinary authority merely because, on a re-appreciation of evidence, a different view is possible. In **State of Orissa v. Bidyabhushan Mohapatra**[16], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public

servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[17], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[18], the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[19], a three Judges Bench of the Supreme Court held as under:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal." (emphasis supplied)

In **B.C. Chaturvedi v. Union of India**[20], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him,

highlighted the limited scope of judicial review by making the following observations:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[21], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

> "It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and

come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

If the appellant's case is considered in the light of the above stated legal position, we do not find any valid ground to upset the order under challenge or interfere with the finding of guilty recorded by the enquiring authority and/or the discretion exercised by the disciplinary

authority to impose the penalty of removal from service.

A brief recapitulation of the factual matrix of the case shows that after availing casual leave for two days, the appellant did not report for duty. This continued to be the position even after the concerned authorities sent written communication dated 11.5.1993 requiring the appellant to join duty. Not only this, he did not attend the enquiry and exhibited recalcitrant attitude by not reporting to duty till the passing of order of removal from service. Learned counsel for the appellant could not offer any explanation as to why his client did not attend the enquiry proceedings or report for duty. If the conduct of the appellant is considered in the backdrop of the fact that just one year ago he had been removed from service on similar charge, it is not possible to find any fault with the discretion exercised by the disciplinary authority to order his removal from service. In our considered view, the punishment imposed on the appellant cannot be termed as shockingly disproportionate to the misconduct found proved.

In Writ Petition No.14373 of 2001 – M.C. Jena v. The Commandant, Central Industrial Security Force Unit, VSP, Visakhapatnam and others decided on July 03, 2007, one of us (the Hon'ble Chief Justice) considered the applicability of proportionality principle in a somewhat similar case and held:

> "The application of the doctrine of proportionality is always a tricky issue. While punishing an employee found guilty of misconduct, the employer/competent authority is required to take into account the total length of service of the delinquent and his past record, the gravity of misconduct found proved and its impact on the establishment, organisation or department. The discretion exercised by the employer in this regard cannot be lightly interfered by the courts. In such cases, the court's power of judicial review is extremely limited. The discretion of the employer can be tinkered only when the conscience of the Presiding Officer of the court is shocked by the degree of punishment and not otherwise. Under no circumstance, the court can exercise appellate power and interfere with the employer's prerogative simply because it feels that a different view could have been taken."

The argument of Shri Nandigam Krishna Rao that the order of punishment should be nullified on the ground of violation of the rules of natural justice because the appellant was not given notice about the proposed consideration of his past adverse record is without substance. The appellant has neither pleaded nor the learned counsel argued that consideration of the past adverse record of the appellant has prejudiced his cause. Indeed, it has not even been suggested that the disciplinary authority had not passed the order of removal from service in 1992 and that on appeal, the punishment of removal from service was substituted with the penalty of reduction of the pay scale for a period of three years. Therefore, we do not see any justification to invoke the rule of audi alteram partem and nullify the order of punishment.

We are further of the view that the writ petition filed by the appellant was liable to be dismissed only on the ground of unexplained delay of almost three years. Undisputedly, the revision filed by the appellant was dismissed by respondent No.3 on 08.2.1995 and the writ petition was filed in 1998. The appellant did not offer any explanation for this long time gap. Therefore, the learned Single Judge should have non-suited him by applying the ratio of the judgments of the Supreme Court in **State of M.P. v. Bhailal Bhai**[22], **Tilokchand Motichand v. H.B. Munshi**[23], **Kamini Kumar Das Choudhury v. State of W.B.**[24] and **Mafatlal Industries Ltd. v. Union of India**[25].

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1094 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

**G.S. SINGHVI, C.J.**

10th July, 2007

**C.V. NAGARJUNA REDDY, J.**

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[1] (1987) 4 SCC 611
[2] (1997) 7 SCC 463
[3] (1994) 2 SCC 537
[4] (1996) 1 SCC 302
[5] (1996) 3 SCC 750
[6] (1997) 6 SCC 381
[7] (1998) 9 SCC 416
[8] (1999) 6 SCC 403
[9] (2001) 2 SCC 386
[10] (1995) 6 SCC 749
[11] (2003) 3 SCC 605
[12] (2003) 4 SCC 331
[13] (2006) 1 SCC 430
[14] (2006) 3 SCC 173
[15] (2006) 3 SCC 276
[16] AIR 1963 SC 779
[17] AIR 1963 SC 1723
[18] AIR 1965 SC 1103
[19] AIR 1975 SC 2151
[20] (1995) 6 SCC 749
[21] (1999) 1 SCC 759
[22] AIR 1964 SC 1006
[23] AIR 1970 SC 898
[24] AIR 1972 SC 2060 = (1972) 2 SCC 420
[25] JT 1996 (11) SC 283